

ENCLOSURE C

SPECIAL CONDITIONS

1. Basis for Requiring Special Conditions

In its March 31, 2004 verification letter to the State, OSEP concluded that Hawaii's practice of automatically including students with disabilities who took the alternate assessment in the "well below proficiency" performance level constitutes noncompliance with the requirements at 20 U.S.C. 1412(a)(16-17) and 34 CFR §§300.137 and 300.139¹, that the State establish goals and indicators for the performance of children with disabilities on alternate assessments, and report to the public on the participation and performance of children with disabilities taking the State's alternate assessment with the same frequency and in the same detail as it reports assessment results of nondisabled students. OSEP directed Hawaii to submit as part of its Annual Performance Report (APR) either evidence that it was currently in compliance with these requirements or a detailed plan for demonstrating compliance within one year. The State's April 27, 2004 APR submission included general language related to establishing alternative standards and revising the alternate assessment by 2005-2006, but did not include either evidence of current compliance or a detailed plan for demonstrating compliance with the above requirements within a year. Therefore, under the authority of the Education Department General Administrative Regulations, at 34 CFR §80.12, the Department is imposing Special Conditions on Hawaii's Federal Fiscal Year 2004 awards under Part B to ensure compliance with the above requirements.

The requirements that States ensure that children with disabilities participate in State and district-wide assessment systems; develop and administer alternate assessments, if necessary; and report publicly on the participation and performance of children with disabilities in State and district-wide assessments are crucial to ensuring that children with disabilities are provided access to high-quality instruction in the general curriculum, and that States and districts are held accountable for the progress of these children. The requirements regarding performance goals and indicators and the participation of children with disabilities in, and reporting on participation and performance of children with disabilities in regular assessments have been in effect since July 1, 1998; the requirements regarding reporting on alternate assessments have been in effect since July 1, 2000.

During the September 2003 verification visit, State staff told OSEP that students with disabilities who were administered the alternate assessment are automatically included in the "well below proficiency" performance level for reading and mathematics regardless

¹ The Part B regulations require, at 34 CFR §300.139(a), that the State must, in implementing the requirements of 34 CFR §300.138, make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following information: (1) the number of children with disabilities participating-(i) in regular assessments; and (ii) in alternate assessments; and (2) the performance results of those children described in paragraph (a)(1) of this section if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

of their performance on the alternate assessment. The special education director explained that HDOE only reports alternate assessment performance results for students with disabilities in the "well below proficiency" level because student performance on the alternate assessment would not be comparable to a student's performance on the standards of the regular assessment. In its March 31, 2004 verification letter, OSEP specifically found that HDOE does not report assessment performance results of students with disabilities who take the alternate assessment in the same detail as it reports on the assessment of nondisabled children in violation of 34 CFR §300.139. Further, Hawaii's use of only one performance level for all students with disabilities who take the alternate assessment is not consistent with the requirements of 34 CFR §300.137. The IDEA, at 34 CFR §§300.137 and 300.139, requires the State either to utilize the same standards and performance indicators for the regular and alternate assessments, or to develop and utilize alternate standards and indicators for the alternate assessment.² That is, students with disabilities taking the alternate assessment must be able either to demonstrate performance at all levels based upon the same standards and indicators that apply to all students, or demonstrate performance at differing levels based upon alternate standards and indicators. Therefore, the automatic inclusion of all students with disabilities who take the alternate assessment into one performance indicator, "well below proficiency" is not appropriate under 34 CFR §§300.137 and 300.139.

In its April 27, 2004 APR submission and its June 25, 2004 progress report submission, Hawaii included the following statements:

- Review Alternate Assessment; begin development of another assessment instrument and an alternate set of (expanded/extended, based on Hawaii Content and Performance Standards II) standards to more appropriately address the developmental/cognitive levels of severe cognitively disabled students;
- Continue to implement plans for review of Alternate Assessment and begin development of "alternate" standards; to be piloted and completed by 05-06 testing period;
- SY 2004—05, HDOE will be developing alternate achievement standards and will be revising the alternate assessment. It is anticipated that results from the Spring 2006 Alternate Assessment using the alternate achievement standards will be aggregated with students with disabilities participating in the Hawaii State Assessment (HAS [sic]) at the achieved proficiency level (e.g. Meeting proficiency against alternate achievement standards will be included with student [sic] meeting proficiency on the HSA).

These statements appear to indicate that Hawaii intends to develop alternate standards and a new alternate assessment for some students with severe cognitive disabilities by 2005-2006. These statements do not demonstrate current compliance and are not a detailed plan to bring the State into compliance within one year of approval. Therefore,

² Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, also includes a number of requirements related to including children with and without disabilities in State assessment programs and reporting on their participation and performance on regular and alternate assessments that in many instances are more specific than requirements in the IDEA. This attachment does not, and should not be interpreted to, address Hawaii's compliance with requirements of Title I.

the Department is imposing Special Conditions to ensure compliance with these requirements.

2. Nature of the Special Conditions

By no later than December 1, 2004, Hawaii must establish and submit to OSEP goals and indicators, consistent with 20 U.S.C. 1412(a)(16) and 34 CFR §300.137, for measuring the performance of children with disabilities participating in its alternate assessment that will allow the State to report to the public and to the Secretary, consistent with the requirements of 34 CFR §300.139.

By no later than June 15, 2005, Hawaii must report publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments, as required by 20 U.S.C. 1412(a)(17) and 34 CFR §300.139.

3. Evidence Necessary for Conditions To Be Removed

The Department will remove the Special Conditions if, at any time prior to the expiration of the grant year, Hawaii provides documentation, satisfactory to the Department, that it has fully met the requirements at 20 U.S.C. 1412(a)(16-17) and 34 CFR §§300.137 and 300.139, that the State establish goals and indicators for the performance of children with disabilities on alternate assessments, and report to the public the participation and performance of children with disabilities taking the State's alternate assessment with the same frequency and in the same detail as it reports assessment results of nondisabled students.

4. Method of Requesting Reconsideration

The State can write to Dr. Troy Justesen, designated to act as the Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS), if it wishes the Department to reconsider any aspect of these Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the State and the reasons for those requested changes.

5. Submission of Reports

All reports that are required to be submitted by Hawaii to the Department under the Special Conditions should be submitted to:

US Department of Education
Office of Special Education and Rehabilitative Services
Attn: Debra Jennings, Room 4020
400 Maryland Avenue, SW
Washington, DC 20202-2600